

June 11, 2003

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

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**REPORT AND RECOMMENDATION TO THE METROPOLITAN KING COUNTY COUNCIL**

SUBJECT: King County Department of Transportation File No. **V-2454**  
Proposed Ordinance No. **2003-0182**

**LISE ELLNER AND TAMALYN NIGRETTO**  
Road Vacation Petition

Location: Portion of SW 261<sup>st</sup> St. east of 101<sup>st</sup> Place SW

Applicant: **Lise Ellner and Tamalyn Nigretto**  
26014 – 101<sup>st</sup> Place West  
Vashon Island, WA 98070  
Telephone: (206) 463-6758

King County: Department of Transportation,  
Road Services Division, *represented by*  
**Jodi Simmons**  
201 S. Jackson St.  
Seattle, WA 98104-3856  
Telephone: (206) 296-3731  
Facsimile: (206) 296-0567

SUMMARY OF RECOMMENDATIONS:

Department's Preliminary:	Approve road vacation
Department's Final:	Approve road vacation
Examiner:	Approve road vacation

DEPARTMENT'S REPORT:

The Department of Transportation's written report to the King County Hearing Examiner for item no. V-2454 was received by the Examiner on May 5, 2003.

PUBLIC HEARING:

After reviewing the Department of Transportation's Report and examining available information on file with the petition, the Examiner conducted a public hearing on the subject as follows:

The hearing on item no. V-2454 was opened by the Examiner at 1:31 p.m. on June 4, 2003, in the Union Bank of California fifth-floor conference room, 900 4th Avenue, Seattle, Washington, and closed at 2:30 p.m. Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

**FINDINGS, CONCLUSIONS & RECOMMENDATION:** Having reviewed the record in this matter, the Examiner now makes and enters the following:

**FINDINGS:**

1. General Information:

Road name and location:	Portion of SW 261 <sup>st</sup> St. east of 101 <sup>st</sup> Place SW Thomas Bros. pg. 713, F3
Right of way classification:	“C”
Area:	7800 square feet
Compensation:	\$0.00 (\$10,247.86 waived)

2. Except as provided below, the Examiner adopts and incorporates herein by this reference the facts set forth in the Department of Transportation's report to the King County Hearing Examiner for the June 4, 2003, public hearing and the statement of facts contained in Proposed Ordinance no. 2003-0182. The Department's report will be attached to those copies of this report and recommendation that are submitted to the Metropolitan King County Council.
3. Maps showing the vicinity of the proposed vacation and the specific area to be vacated are Attachments 1 and 2 to this Report and Recommendation.
4. Lise Ellner and Tamalyn Nigretto have petitioned to vacate a 30 by 260 foot section of Southwest 261st Street which lies along the southern boundary of their property. The roadway has never been opened or constructed. A County drainage facility, however, was constructed in 1993 along the eastern portion of the right-of-way to resolve a regional flooding problem. Since construction this facility no serious drainage problems have been encountered in this location.
5. Except for the drainage facility, the right-of-way for Southwest 261st Street is undeveloped. Photographs show that it is heavily vegetated, mostly with alder, blackberry and a variety of ferns and other shrubs. Through an informal agreement, access to the drainage facility has been provided to King County by the Petitioners via their driveway that runs parallel to the north side of the Southwest 261st Street right-of-way. As part of their application, the Petitioners have granted easements to the County for the drainage facility within the right-of-way and for continued access over their private driveway. Since the value of these easements exceeds the compensation required under the ordinance for the vacation, staff has recommended that all compensation be waived. The Petitioners have no plan for the vacation area except to maintain it in native vegetation.
6. This petition has encountered some spirited opposition from neighborhood residents, particularly Mr. Allen Watts who resides adjacent to the Petitioners to their north. Mr. Watts' first objection to the petition was that he did not receive a mailed notice of hearing and the posted notices at the

road termini were in obscure locations. While there can be little doubt that the eastern terminus posting is in an obscure location due to the lack of development in the immediate vicinity, the western terminus notice appears from the photographs submitted to be clearly visible from 101st Place Southwest. The notices meet the legal requirements stated at RCW 36.87.050, and Mr. Watts received actual notice of the hearing.

7. Mr. Watts' second objection was that vacation of this section of Southwest 261st Street would deprive the neighborhood of potential future parking spaces. A great deal of energy was expended by both Mr. Watts and the Petitioners in describing the present parking situation on 101st Place Southwest and around the corner to the north on Southwest 260th Place. Each party pointed the finger of blame at the other for eliminating parking spaces by encroaching on the public right-of-way. There was no evidence, however, that Southwest 261st Street itself was ever used for public parking or, given its topography and primary use as a drainage corridor, that paving the roadway for parking would be a viable option. Moreover, there was no suggestion that parking availability in the neighborhood becomes a serious issue except on a few summer weekends when two or three waterfront parcels to the west host large parties.
8. Without speculating on the ultimate merits of this neighborhood dispute, it is clear that elimination of future parking potential is not a relevant review standard within a road vacation proceeding. Pursuant to RCW 36.87.060, a County road is to be vacated if it is no longer "useful as a part of the County road system." This standard relates to the roadway's public use as a transportation corridor, not as a parking lot. No property owners use Southwest 261st Street for access to their parcels. Its development is not necessary for neighborhood circulation, and no one has suggested that any properties will be landlocked by the vacation of the petition area.
9. Finally, Mr. Watts argued that the vacation should be denied in order not to preclude members of the public from maintaining the drainage facilities within the right-of-way during an emergency. This argument also appears to be without merit. First, due to the heavy vegetation growth, there is no practical access to the drainage facilities now via the Southwest 261st Street right-of-way. Since the 1993 improvements were installed, all maintenance access has been off-site over the Petitioners' driveway. Second, the drainage facilities are owned and maintained by King County, and there is no general public right to access them. Adequate access has been provided by the Petitioners to the County, which should be regarded as satisfying any maintenance requirement. Further, since 1993 emergency maintenance of the facilities has not been an actual necessity.

#### CONCLUSIONS:

1. The road subject to this petition is useless as part of the King County road system and the public will be benefited by its vacation.
2. The Notice of Hearing on the report of the Department of Transportation was given as required by law, and a hearing on the report was conducted by the King County Hearing Examiner on behalf of the King County Council.
3. The compensation normally required for vacation of the right-of-way should be waived in this instance due to the substantial public benefit that King County will receive in the form of the easements granted by the Petitioners.

RECOMMENDATION:

APPROVE proposed Ordinance no. 2003-0182 to vacate the subject road.

RECOMMENDED this 11th day of June, 2003.

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Stafford L. Smith  
King County Hearing Examiner

TRANSMITTED this 11th day of June, 2003, to the following parties and interested persons:

CenturyTel	Allen & Muriel Watts	Kristen Langley
Terry Davis	Greg Borba	Roderick E. Matsuno
Dockton Water Association	Curt Crawford	Paulette Norman
Gail Dunham	Neil DeGoojer	Robert Nunnenkamp
Gary Kawasaki	Pam Elardo	Lydia Reynolds-Jones
Lise Ellner & Tamalyn	Nancy Gordon	Gary Samek
Nigretto	Dennis Gorley	Charlie Sundberg
Kitty Ogg	David Gualtieri	Caroline Thompson
Jodi Simmons		

NOTICE OF RIGHT TO APPEAL  
AND ADDITIONAL ACTION REQUIRED

In order to appeal the recommendation of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) *on or before* **June 25, 2003**. If a notice of appeal is filed, the original and 6 copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council *on or before* **July 2, 2003**.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 3<sup>rd</sup> Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within 14 days calendar days of the date of this report, or if a written appeal statement and argument are not filed within 21 calendar days of the date of this report, the Clerk of the Council shall place a proposed ordinance which implements the Examiner's recommended action on the agenda of the next available Council meeting. At that meeting, the Council may adopt the Examiner's recommendation, may defer action, may refer the matter to a Council committee, or may remand to the Examiner for further hearing or further consideration.

Action of the Council Final. The action of the Council on a recommendation of the Examiner shall be final and conclusive unless within twenty-one (21) days from the date of the action an aggrieved party or person applies for a writ of certiorari from the Superior Court in and for the County of King, State of Washington, for the purpose of review of the action taken.

MINUTES OF THE JUNE 4, 2003 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT  
AND ENVIRONMENTAL SERVICES FILE NO. V-2454

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing were Jodi Simmons and Lydia Reynolds-Jones, representing the Department; and Lise Ellner, Petitioner; and Allen Watts and Gail Dunham.

The following exhibits were offered and entered into the record:

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|-------------------|--|
| Exhibit No. 1     | DOT Report to the Hearing Examiner dated June 4, 2003, with 17 attachments   |
| Exhibit No. 2     | Petition transmittal letter dated 05/06/02 to Transportation Dept. from Clerk of the Council   |
| Exhibit No. 3     | Letter of explanation dated 6/04/02 and Petition for Vacation of a County Road including legal description of Petitioner's property  |
| Exhibit No. 4     | 06/19/02 letter to Petitioner explaining road vacation process   |
| Exhibit No. 5     | Copy of Filing Fee - Check #156 from Law Offices of Lise Ellner  |
| Exhibit No. 6     | Vicinity Map   |
| Exhibit No. 7     | Map depicting vacation area  |
| Exhibit No. 8     | Drainage Easement – Recording #20030109002041  |
| Exhibit No. 9     | Drainage Access Easement – Recording #20030109002042   |
| Exhibit No. 10    | 01/17/03 transmittal letter to Council providing recommendation of KCDOT and County Road Engineer to waive the required compensation |
| Exhibit No. 11    | Letter dated 01/17/03 to petitioners providing recommendation to vacate the subject right-of-way and waive the required compensation |
| Exhibit No. 12    | Ordinance transmittal letter dated 4/14/03 from King County Executive to Councilmember Cynthia Sullivan                              |
| Exhibit No. 13    | Proposed Ordinance 2003-0182 with attachments (easements)  |
| Exhibit No. 14    | Notice of hearing from the Council Clerk dated 5/02/03   |
| Exhibit No. 15    | Affidavit of May 2, 2003, posting for hearing  |
| Exhibit No. 16    | Affidavit of Publication for date of hearing ( <i>to be submitted post-hearing, upon receipt</i> )                                   |
| Exhibit No. 17    | Memo from Allen J. Watts, faxed on 5/30/03   |
| Exhibit No. 18    | Letter from Gary Kawasaki, faxed on 6/03/03  |
| Exhibit No. 19    | Letter from Lise Ellner and Jim Moore, faxed on 6/03/03  |
| Exhibit No. 20A-S | Photos (19) of subject area provided by Lise Ellner  |
| Exhibit No. 21    | Polaroid photos (8) taken by Allen Watts with attached map and 6/4/03 letter to the Hearing Examiner                                 |
| Exhibit No. 22    | Map of area subject property vicinity with handwritten notes and color-coding  |

SLS:ms

V-2454 RPT

Attachments